

Assembly Bill No. 412

CHAPTER 106

An act to amend Section 11411 of the Penal Code, relating to hate crimes.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 412, Carter. Hate crimes: nooses.

Existing law establishes various offenses for persons who display certain symbols or burn crosses on private or school property with the intent to terrorize persons, as specified.

This bill would provide that any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$15,000, or by both the fine and imprisonment for any subsequent conviction.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Hanging a noose is directly correlated with America's history of racial hatred and murder, representing not only a threat to African American life and safety, but causing further psychological and emotional trauma as well, and noose hanging is still happening now.

(b) There are 2,805 documented victims of lynch mob killings between 1882 and 1930 in 10 southern states. The vast majority of lynch victims were African American. Of these black victims, 94 percent died in the hands of white lynch mobs. The scale of this carnage means that, on average, a black man, woman, or child was murdered nearly once a week, every week, between 1882 and 1930 by a hate-driven lynch mob.

(c) The lynching era encompasses nearly five decades between the end of Reconstruction and the beginning of the Great Depression. Although lynchings and mob killings occurred before 1880, notably during early Reconstruction when blacks were enfranchised, radical racism and mob violence peaked during the 1890s in a surge of terrorism that extended well into the 20th century.

(d) In addition to the punishment of specific criminal offenders, mob lynching atrocities against African Americans in the American South served to maintain social control over the black population through terrorism; suppress, eliminate, or neutralize black competition for economic, political, and social rewards; stabilize the white class structure and preserve the privileged status of the white aristocracy; eradicate specific persons accused of crimes against the white community; serve as a mechanism of state-sanctioned terrorism designed to maintain a degree of leverage over the African American population; and serve as a symbolic manifestation of the unity of white supremacy.

(e) The documented reasons for African American lynchings included, but were not limited to, acting suspiciously, gambling, adultery, race hatred, race troubles, improper conduct with white women, arguing with a white man, resisting a mob, inflammatory language, informing, being obnoxious, spreading disease, insulting a white man, insulting a white woman, suing a white man, insurrection, courting white women, testifying against a white man, living with a white woman, defending an alleged rapist, demanding respect, miscegenation, trying to vote, disorderly conduct, mistaken identity, unpopularity, eloping with a white woman, unruly remarks, entering a white woman's room, using obscene language, being a peeping Tom, violating quarantine, voting for the wrong party, frightening white women, and membership in a civil rights organization.

(g) Given this history, to a reasonable person, the display of a noose at a school, park, place of employment, or other public venue amounts to a direct and immediate threat of force that would intimidate persons based on racial characteristics.

SEC. 2. Section 11411 of the Penal Code is amended to read:

11411. (a) Any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school,

park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.

(b) Any person who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property shall be punished by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction and by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.

(c) Any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another on two or more occasions, shall be punished by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine not to exceed ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment. A violation of this subdivision shall not constitute felonious conduct for purposes of Section 186.22.

(d) Any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school, shall be punished by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction and by imprisonment in the state prison for 16 months or 2 or 3 years, by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen

thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.

(e) As used in this section, “terrorize” means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.